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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>June 18, 2007</u></p> <p>Signature <u>Kathleen Sipos</u></p> <p>Typed or printed name <u>Kathleen Sipos</u></p>		Application Number	Filed
		10/779,318	Feb. 13, 2004
		First Named Inventor	
		E. Aksu et al.	
		Art Unit	Examiner
		2143	Alina Boutah
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>58,051</u></p>		<p><u>Keith R. Obert</u> Signature</p> <p><u>Keith R. Obert</u> Typed or printed name</p> <p><u>203-261-1234</u> Telephone number</p> <p><u>June 18, 2007</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>3</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No. 944-001.103-5
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: **E. Aksu et al.** : Confirmation No.: **5213**

Serial No.: **10/779,318** : Examiner: **Alina Boutah**

Filed: **February 13, 2004** : Art Unit: **2143**

For: **METHOD FOR SIGNALING STREAMING QUALITY ADAPTATION AND
CONTROL MECHANISMS IN MULTIMEDIA STREAMING**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the final Office Action of January 16, 2007, please reconsider the rejections in light of the following remarks.

CERTIFICATE OF MAILING

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Kathleen Sipos

REMARKS

The Office examined claims 1-13, and all claims are rejected. Applicant respectfully submits that the Office has committed clear error in rejecting the claims, because the Office has failed to show that the cited references meet all of the limitations recited in the claims, and failed to show proper motivation to combine the cited references. Therefore, applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following discussion.

This Pre-Appeal Brief Request for Review is submitted along with a Notice of Appeal.

Claim Rejections Under § 103

On page 2 of the Office Action, claims 1-13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Riddle (U.S. Patent No. 6,175,856) in view of Applicant's Admitted Prior Art (AAPA). Applicant respectfully submits that the Office has committed clear error in rejecting claim 1, because there is no motivation to combine the teachings of the reference with those of the AAPA, and even if they were combined one of skill in the art would not arrive at the limitations recited in claim 1.

On page 3 of the Office Action, the Office acknowledges that Riddle does not teach that the adaptation mechanisms or capabilities are regarding a data delivery process, and relies on the AAPA from applicant's own specification. The section of applicant's specification relied upon by the Office recites:

In a multimedia streaming service, there are three participants involved: a streaming server, a streaming client and an underlying network which provides the connectivity between the server and the client. The server provides the functionality to deliver the multimedia streaming content to the client. For that purpose, the client and server communicate with each other over the network regarding the methods of capability exchange, content delivery method negotiation, content delivery control, and so forth. Such information exchange can be carried out via well-defined network protocols.

For a multimedia streaming session to be set up and started successfully, the server and the client need to support a minimal set of protocols, which are selected as standard protocols by the service. An example of such a service can be found in 3GPP TS 26.234 V5.1.0, "Transparent End-to-End Packet Switched Streaming Service (PSS); Protocols and Codecs (Release 5)", June 2002, hereafter referred to as TS 26.234). Furthermore, in order for a service to be successful from the data delivery and playback performance point of view, the *data delivery control* mechanisms in the service must also be well-defined. Such mechanisms are used to *adapt* the data delivery process in order to cause the changes of behavior in the underlying network characteristics. (emphasis in original).

However, the motivation to combine the cited portion of applicant's specification with Riddle is derived from applicant's own disclosure. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's own disclosure. *See* MPEP § 2143; *see also In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). Applicant respectfully submits that the Office has based the combination of teachings on applicant's own disclosure, because the present invention specifically identifies the need for "a capability identification mechanism to identify the supported adaptation mechanisms or capabilities and an adaptation capability signaling and negotiation mechanism for the server and client to agree on the usage of a particular set of adaptation mechanisms or capabilities defined within the service context." *See* specification page 2, lines 24-27. The combination of adaptation mechanisms or capabilities regarding data delivery process with the negotiation between the server and client to agree on the usage of a particular set of adaptation mechanisms or capabilities is the invention recited in claim 1.

Without applicant's disclosure there is no motivation to implement the system discussed in Riddle for a data delivery process without applicant's disclosure specifically pointing out this deficiency in the prior art (see specification page 2, lines 28-30), and suggesting a solution. Applicant acknowledges that information identified in applicant's specification as "prior art" may be treated as prior art. *See* MPEP § 2129. However, when applicant has merely identified a problem, and proposes a solution to the problem, it is impermissible hindsight reasoning to use applicant's own disclosure to provide the motivation to combine the references to arrive at the claimed limitation. *See* MPEP § 2143. Therefore, for at least this reason claim 1 is not disclosed or suggested by Riddle in view of the AAPA.

In addition, the Office has not explicitly provided the motivation to combine Riddle with the AAPA, and therefore has committed clear error by failing to provide motivation to combine the teachings to arrive at the claimed limitations. The Office asserts on page 3 of the Office Action that one of skill in the art would have been motivated to provide adaptation mechanisms or capabilities regarding a data delivery process in order to cause changes of behavior in the network characteristics, therefore allowing successful service. Regardless of the fact that this assertion is derived directly from applicant's own disclosure as discussed above, the Office has still failed to identify a reason why one of skill in the art would combine the teachings as asserted by the Office. The motivation offered by the Office is insufficient because it merely identifies

the combination asserted by the Office to be obvious. It is insufficient for the Office to assert that the combination would allow “successful service,” without providing some suggestion, motivation or teaching that one of skill in the art would recognize that the combination would result in “successful service.” Therefore, the assertion that the combination would be successful overlooks the requirement that there must be some motivation to make the combination before it can be realized that the combination would in fact be successful. As such, the Office has committed clear error by failing to explicitly provide proper motivation to combine the teachings, and instead has relied upon improper hindsight reasoning in asserting that the claims are obvious.

Furthermore, even if Riddle is combined with the AAPA as suggested by the Office, all the limitations recited in claim 1 would not be disclosed or suggested by the combination. The AAPA only states that the data delivery control mechanisms in the service must be well-defined, and that such mechanisms are used to adapt the data delivery process in order to cause the changes of behavior in the underlying network characteristics. *See* specification page 32-35. However, the AAPA mentions nothing about signaling and negotiation of mechanisms used to adapt the data delivery process as discussed in claim 1. Therefore, for at least this additional reason, Riddle and the AAPA, alone or in combination, fail to disclose or suggest all of the limitations recited in claim 1.

For at least the reasons discussed above in relation to claim 1, independent claims 5, 8 and 11 are also not disclosed or suggested by Riddle in view of the AAPA.

As for claims 2-4, 6, 7, 9, 10, 12 and 13, they are dependent from claims 1, 5, 8 and 11 and recite features not recited in claims 1, 5, 8 and 11. Therefore, these dependent claims are patentable at least in view of their dependencies.

Conclusion

Applicant respectfully submits that the present application is in condition for allowance, and such action is earnestly solicited. Applicant hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

Date: 18 June 2007

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